

A Purview of the Gacaca Courts of Rwanda from the Teleological and Deontological Perspectives of Ethics and Peace Building

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Abstract

This paper attempts to give a synopsis of the historical background of Rwanda before the 1994 genocide. As an aid to analysis an exposition of two sets of ethical theories is presented, namely Teleology and Deontology, as a prelude to the historical background. The two theoretical perspectives provide a framework for assessing the moral implications of actions of all those involved before, during and after of the genocide. As the discourse unfolds, the paper delves into the events that constituted the genocide itself. In this connection real episodes of how more than 800 000 people lost their lives are chronicled. The paper also highlights the conceptual and legal foundations of the Gacaca courts. Against this background the discussion proffers the role of the Gacaca courts of Rwanda in the peace building process in the post genocide era. However, limitations of the Gacaca courts of Rwanda as a quasi-judicial system are also examined. On the basis of insights gleaned from both the model of the Gacaca courts of Rwanda as well as the teleological and deontological theoretical frameworks conclusions and recommendations are showcased. Though the recommendations are generally and universally applicable in ensuring sustainable peace in a variety of circumstances, they are more amenable to peace building efforts in post conflict states.

Key Words: Teleology, Deontology, peace building, post conflict state, ethical theory, genocide, conflict resolution, Rwanda and Gacaca courts

1. Introduction

This paper seeks to showcase the role of the Gacaca courts of Rwanda in the peace building process in the aftermath of the Rwandan genocidal war. The discourse sets off with the review of two theories of ethics and peace building. In order to place the functions of the Gacaca courts into proper perspective the historical background of the genocide as well as the framework of the legal dispensation in Rwanda are examined.

2. Statement of the Problem

Many states the world over have been sites for ethnic, class, religious, tribal and political struggles. Manifestations of these struggles have been of varying scope and magnitude, and have also yielded different consequences. A classical case is that of Rwanda where ethnic differences precipitated a catastrophic genocidal war. This paper proffers a trajectory of events before, during and after the Rwandan Genocide with focus on the role of the Gacaca courts in bolstering the peace building process in Rwanda after the 1994 genocide.

3. Objectives

A number of key objectives provided the bedrock for this concept paper. Consequently in order to provide sufficient focus and direction to the ensuing discourse, the objectives are enunciated below as follows:

- To provide an exposition of the teleological and deontological theories of ethics and peace building
- To give a succinct historical background of Rwanda before the 1994 genocide
- To proffer the conceptual and legal framework of the Gacaca courts of Rwanda
- To highlight the events that constituted the genocide itself
- To give a purview of the role and limitations of the Gacaca courts in peace building
- To showcase recommendations that bear on the implications of the discourse in peace building in post conflict states.

4. An exposition of the teleological and deontological theories of ethics and peace building

Two broad classifications characterize ethical theories: teleology and deontology. These theoretical perspectives provide a schema for assessing the moral worthiness of actions, acts and processes by individuals, groups, parties and civil society within the spheres of power at national level (Bonevac, 2010).

4.1 Teleological ethical theory

Bon, (2001) propounds that this school of thought is also branded as the teleological utilitarian theories. The cluster of theories embraced in this perspective was first developed by: Jeremy Bentham (1748-1832), and John Stuart Mill (1806-1873). This group of theories is enched on the following tenets:

- focus is on end result, i.e the ultimate consequences of an action, decision or choice;
- an action is ethical when it brings the best consequences;
- a good action increases the balance of pleasure over pain, and pleasure is experienced under conditions of peace in a community or nation; and
- actions are right in proportion to the extent they promote happiness, and good for the greatest number.

The purpose of the tenets proffered above is to enable the reader to make an independent evaluation of the moral worthiness of actions, decisions and processes that underpinned the Rwandan genocide. However based on the above tenets, one is tempted to conclude that if the ultimate purpose of the Gacaca courts of Rwanda, was to usher in a period of lasting and sustainable peace, then the establishment and operationalisation of these courts was justifiable from teleological point of view (Shaw, 2002).

4.2 Deontological ethical theory

Winter (1968) reveals that the proponents of the deontological ethical theories are Aristotle (384-322 BC), St Thomas Aquinas(1265-1273), David Hume(1711-1776) and Emmanuel Kant(1724-1804). By contrast this set of theories focus more on the inherent quality of actions as opposed to their consequences. However, they do not necessarily deny the moral significance of consequences. According to Morscher, Neumaier and Simons (1998) the following assumptions underlie deontological ethical theories:

- focus is on the inherent and intrinsic character of an act itself;
- regardless of the purported desirable consequences of an action, an action remains unethical if its inherent character is deemed bad;
- deontologists postulate that there are certain things we ought to do regardless of their consequences;
- people can attain virtue and happiness only in the context of good governance; and
- actions that bring about the common good should take precedence over those that do not.
- all natural law tends towards order, peace and harmony.

Beauchamp and Bowie (1997) assert that, when viewed from the deontological theoretical perspective the Hutu justified their actions to massacre hundreds of thousands of people, on the grounds to maintain ethnic and political hegemony. However critics of this school of thought no doubt regard the motives of this vision as inherently flawed as it resulted in the commission of crime against humanity. Nonetheless, of significance to note is that the variety of ethical theories examined above culminated in the UDHR, National constitutions and regional protocols as safeguards for sustainable peace and order (La Follette, 2007). Against this backdrop, this paper is set to examine the role of the Gacaca courts of Rwanda, in promoting peace and stability in the aftermath of the catastrophic 1994 genocide.

5. The historical background of Rwanda before the 1994 genocide

The 1994 genocide in Rwanda was a result of a civil war between the two ethnic groups, the Hutu and the Tutsi. Originally the Hutu and the Tutsi were not construed as racial classifications, but rather as socio-economic groups. The Hutu were agriculturalists while the Tutsi were pastoralists. The racial stratification was introduced as a psychological construct for the convenience of the Belgian colonial masters. The classification of the Rwandan people into two mutually exclusive groups, with the ruling Tutsi and the inferior Hutu had far reaching consequences in the political dispensation of the Rwandan people (Prunier, 1999).

In 1959, the Hutu revolution began and resulted in the establishment of the Hutu hegemony over the Tutsis. The Tutsis were relegated to an inferior social position. In 1962, Kayibanda. G, a Hutu became the first president of Rwanda. Kayibanda and his successor president Habyarimana sought to reverse the Belgian policies by elevating Hutu to power and systematically making the Tutsi an inferior class. In a sudden swing of events in 1990, the Tutsi based Rwandan Patriotic Front (RPF) attacked Rwanda. The attack sparked years of civil strife. The Hutu government began mass distribution of weapons to local communities. In addition the propaganda that

followed characterized Tutsis as cockroaches and an imminent threat to Hutu supremacy. With the unleashing for real military force by the Hutu government reinforced by the psychological warfare against the Tutsi, this marked the onset of the Rwandan genocide war in 1994.

6. The Rwandan Genocide (1990-1994).

Following almost a century of acrimonious relations between the two major ethnic groups in Rwanda, the Hutu and the Tutsi, a state driven genocide was precipitated when president Habyarimana's plane was shot down in April 1994. The militia, army and police moved swiftly to spearhead the killings and incited locals to turn against their neighbours to cleanse the country of the Tutsi threat in the quest to maintain the Hutu supremacy. According to Paul (2015) large scale killings of the Tutsis on grounds of ethnicity began within a few hours of the death of president Habyarimana. Rumours from Kigali that (RFP) had downed the presidential plane rapidly fueled the Tutsi killings, that spread to almost all provinces by the 7th of April 1994, as the orders to kill the Tutsi became widespread. The Hutu population which had been prepared and armed during the preceding months carried out the orders ruthlessly without reservation. Many observers reveal that during the first 6 weeks of onslaught, up to 800 000 Rwandans had been murdered. The express intention was to decimate all Tutsis living in Rwanda. Nonetheless along the process some Hutus were also killed for a variety of reasons. The genocide ended after 100 days, with the defeat of the ruling Hutu government by the Tutsis (RFP), insurgency. After the genocide government imprisoned 120 000 suspects. The government run judicial system had not escaped decimation by the war and could not adjudicate this mammoth caseload. The justice system had only 700 judges and magistrates of whom less than 50 had received formal legal training. From 1997 to 2004, Rwandan civil courts had only dealt with 10 026 out of the 120 000 suspects. It became increasingly compelling to bring on board the Gacaca courts in order to spread the clearance of the backlog of genocide criminal cases.

7. The conceptual and legal framework of the Gacaca courts of Rwanda

According to Sarkin (2001), the term Gacaca was derived from the word lawn, which refers to the fact that members of the court sat on the grass when presiding over criminal and civil matters brought before them. The prototype traditional dispute resolution method was used at local community level and administered by revered local leaders or elders. Initially it dealt with disputes concerning property and family matters. With the advent of the European colonization in the 1890s, the system became partially obscured for some time. However following the 1994 genocide in Rwanda, the then minister of justice reactivated the concept of the Gacaca courts in order to relieve the struggling judicial system of the burden of minor cases.

The transitional national assembly of Rwanda adopted Organic Law no 40/2000 of 16 January 2001 on the establishment of the Gacaca jurisdictions and organization of prosecutions for offences constituting the crime of genocide and crimes against humanity between 1 October 1990 and 31 December 1994 (Nuwamanya, 2008). Like the prototype traditional Gacaca system, the modern Gacaca courts focused on truth and reconciliation. The ultimate goal of this transitional justice system was to prevent a recurrence of genocide and allow the country to move forward through achievement of reconciliation. The new version of the Gacaca courts represented a paradigm shift as it was formally recognized by the government. It was sanctioned by formal structures that took the justice delivery system to the community level, where both the perpetrators and victims of war crimes were found.

In 1999, the Rwandan government undertook to modernize and formalize the Gacaca judicial dispensation. The 5 epithets of the new Gacaca process were:

- to establish the truth about what happened;
- to accelerate the legal proceedings for those accused of genocide crimes;
- to eradicate the culture of impunity;
- to reconcile Rwandans and foster a sense of unity; and
- to use the capabilities of the Rwandan society to deal with problems through a recourse to the Rwandan custom.

Crawford (2001) posits that, in October 2001, Rwandans elected 260 000 Gacaca judges based on their moral standing, integrity and noninvolvement in the genocide. The appointed judges underwent training between November and December 2005, in anticipation of commencement of Gacaca court sessions nationwide in 2006. The Gacaca court legal process involved collection and validation of data, trial and delivery of verdicts. The Rwandan justice system followed a strict system of codification of crimes that attracted a wide spectrum of punishments or convictions. Agence France Presse (2007) 25 July, there were three categories of crimes in the Rwandan justice system in reference to the 1990-1994 genocide. Category one offenders included rapists and

those who abused leadership positions. The second category was an aggregated group comprising:

- a) Murderers, torturers and people who tempered with dead bodies
- b) Ordinary killers who were unsuccessful.
- c) People who committed attacks without intention to kill.

The third category included persons who engaged in property offences. It was on the basis of the foregoing codification of offences that justice was expedited starting January 2006 and the process was expected to be concluded by June 2010. As of April 2009, the Gacaca courts had completed 1.1 million cases, the vast majority of which were completed after formal opening of the Gacaca courts in 2006. (Hirondelle News Agency, 2010).

8. A purview of the role and limitations of the Gacaca courts of Rwanda in Peace Building

The Gacaca courts played an important role in the peace building process after the 1994 genocidal war in Rwanda. They brought to zero the probability of sliding back into another genocide since the Tutsi victims of the 1994 catastrophe could have sought revenge following the Tutsi (RPF)'s ascendancy to power. The Gacaca courts created a platform that brought both the perpetrators and victims of the genocide face to face in dialogue. The criminal would step forward and make full confessions on his crimes and ask for forgiveness from his victims, whereupon the survivors had the courage to grant it. Schabas (2005) reveals that the Gacaca courts, unlike government western styled courts, were true agents of reconciliatory justice. The ability by survivors to forgive their offenders was one of the key pillars which sustained the peace building process in Rwanda after the genocide. The dignity of the Gacaca courts made victims not to entertain thoughts of revenge. The process was further bolstered by the ability of the Gacaca courts to try huge numbers of genocide suspects within a reasonably short time. This in part enabled the people of Rwanda to quickly outlive the negative effects of the genocide in favour of pursuing an agenda for national building and development.

At psychological level, the Gacaca courts provided invaluable insights on behavior accountability. First and foremost, the concept of these courts instilled peace of mind among the victims, for it became a sure case that offenders were punished. Secondly it became apparent that whoever replicated the same crimes would face the full force of the law. Prosecution of suspects was a confidence building mechanism that sought to restore a sense of human value and dignity among the people of Rwanda. This was in tandem with the central objective of the Gacaca courts: to strengthen unity and reconciliation among Rwandans. The other salient achievement of the home grown courts was that through public confessions of the perpetrators, genocide survivors were able to identify sites where their dead relatives were dumped. This enabled survivors to afford their relatives decent burials. The monumental role of the Gacaca courts of Rwanda cannot be overemphasized. Research by the centre for Conflict Management (CCM) at the university of Rwanda attest to this by revealing that the Gacaca courts contributed at the level of 87.3% to the objective of national unity and reconciliation.

Though the Gacaca courts were instrumental in the peace building process in the aftermath of the 1994 genocide, they were however dogged by some limitations. The Gacaca system had an insurmountable problem of legitimacy that originated from the fact that most judges lacked formal legal training. This limited their capacity to dispense justice fairly. Besides this, some of the judges themselves had committed serious crimes against humanity and therefore were not qualified to preside over criminal cases. Apart from the legitimacy issue, some criminals were elusive as they dodged trials by relocating to other places outside their initial villages of crimes commission where trials were conducted. Senior Tutsi leadership were exempted from facing trials even though they were complicity in the commission of crime. Regardless of the above pitfalls of this traditional legal dispensation, the Gacaca courts played an unparalleled and monumental role in securing sustainable peace, unity and national building after the 1994 genocidal war.

9. Conclusions and Recommendations

On the basis of the foregoing discourse, some salient conclusions and recommendations were promulgated.

9.1 Conclusions

- The 1994 Rwandan genocide was precipitated by the power struggle between the two distinct and dominant ethnic groups in Rwanda, the Hutu and the Tutsi.
- Each of the ethnic groups had sought to establish social, economic and political hegemony over the other
- Originally the two groups were not construed as social status groups, but as mere socio economic formations.
- Social stratification was introduced as a psychological construct by and for the convenience of the

Belgian colonial masters.

- Nonetheless, the social stratification had catastrophic consequences for the people of Rwanda.
- The Gacaca courts of Rwanda largely averted a recourse to war, in the aftermath of the genocide and achieved peace, national reconciliation and national building.
- The establishment, mandate, dispensation and outcomes of the the Gacaca courts were morally justifiable from both the teleological and deontological theoretical perspectives of peace building.

9.2 Recommendations

- Racial, tribal, ethnic, religious and social interests should not command precedence over national interests. National leaders then, should embrace unity in diversity
- Post conflict states should deliberately engage perpetrators of violence, murder and other crimes to account for their actions within the framework of national reconciliation and transitional justice.
- As witnessed in Rwanda a synergy between traditional conflict resolution methods and the formal judicial system, often produces the best results in the dispensation of reconciliatory justice
- National governance policies should not be sustained by their appeal to satisfy majority interests, but rather by their address to the welfare and common good of the entire citizenry.
- Good governance as an ethical issue should be anchored on principles of public accountability, transparency and the whole spectrum of the teleological and deontological imperatives of ethics of peace building.

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